

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES BRITT,

Plaintiff,

v.

PLACER COUNTY JAIL, et al.,

Defendants.

No. 2:21-cv-01225 DB P

ORDER

Plaintiff, an inmate in Placer County jail proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants were deliberately indifferent to unsafe conditions of plaintiff's confinement in violation of his Eighth Amendment rights. Before the court is plaintiff's motion to proceed in forma pauperis (ECF No. 2) and plaintiff's complaint for screening (ECF No. 1).

For the reasons stated below, plaintiff's motion to proceed in forma pauperis will be granted. Plaintiff will be given the option to proceed on his cognizable claims or to be given leave to file an amended complaint.

IN FORMA PAUPERIS

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). (ECF No. 2.) Accordingly, plaintiff's request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

SCREENING

I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

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1 However, in order to survive dismissal for failure to state a claim a complaint must
 2 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
 3 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
 4 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
 5 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
 6 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
 7 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

8 The Civil Rights Act under which this action was filed provides as follows:

9 Every person who, under color of [state law] . . . subjects, or causes
 10 to be subjected, any citizen of the United States . . . to the deprivation
 11 of any rights, privileges, or immunities secured by the Constitution .
 12 . . shall be liable to the party injured in an action at law, suit in equity,
 13 or other proper proceeding for redress.

14 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
 15 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
 16 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). “A
 17 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of §
 18 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform
 19 an act which he is legally required to do that causes the deprivation of which complaint is made.”
 20 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

21 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
 22 their employees under a theory of respondeat superior and, therefore, when a named defendant
 23 holds a supervisory position, the causal link between him and the claimed constitutional
 24 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
 25 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations
 26 concerning the involvement of official personnel in civil rights violations are not sufficient. See
 27 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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II. Linkage Requirement

Under Section 1983, a plaintiff bringing an individual capacity claim must demonstrate that each defendant personally participated in the deprivation of his rights. See Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). There must be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Ortez v. Washington County, State of Oregon, 88 F.3d 804, 809 (9th Cir. 1996); see also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

Government officials may not be held liable for the actions of their subordinates under a theory of respondeat superior. Iqbal, 556 U.S. at 676 (stating vicarious liability is inapplicable in Section 1983 suits). Since a government official cannot be held liable under a theory of vicarious liability in Section 1983 actions, plaintiff must plead sufficient facts showing that the official has violated the Constitution through his own individual actions by linking each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff's federal rights. Id. at 676.

III. Allegations in the Complaint

In his complaint plaintiff indicates that, at all relevant times, he was an inmate at Auburn Jail in Placer County. (ECF No. 1 at 1.) Plaintiff identifies as defendants: the jail, correctional officer Ortiz, correctional officer James, and correctional officer Oliver. (Id. at 2.)

In the complaint, plaintiff alleges the following: on Sunday, April 25, 2021, plaintiff was transferred to a new cell by defendants Ortiz and Oliver. (Id. at 4.) After plaintiff was placed in the cell, plaintiff “realized it was smeared in feces.” (Id.) Plaintiff contacted defendant Ortiz, explained the issues with his cell, and asked to be allowed to clean his cell. (Id.) Defendant Ortiz told plaintiff that “it was peanut butter” and, despite plaintiff’s insistence that it was feces, told plaintiff he could clean his cell on Thursday, his designated cleaning day. (Id.) Plaintiff attempted to clean his cell with shampoo in the interim. (Id.) On plaintiff’s cleaning day, defendant James told plaintiff that he would be unable to clean as “they were busy.” (Id.) Plaintiff was unable to clean for three weeks. (Id.) At the time of filing, plaintiff has not been given access to “official sanitizing cleaning supplies” and has been unable to clean remaining

feces from the ceiling, door, door jam, and tray slot of his cell. (Id. at 3.) Plaintiff also notes that he has asthma and that the “COVID-19 pandemic is going on.” (Id.)

Defendant requests \$30,000.00 in damages from the defendants. (Id. at 7.)

IV. Does Plaintiff State a § 1983 Claim?

A. Legal Standards for Conditions of Confinement Claims

The Eighth Amendment prohibits the infliction of “cruel and unusual punishments.” U.S. Const. amend. VIII. The unnecessary and wanton infliction of pain constitutes cruel and unusual punishment prohibited by the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986); Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). Neither accident nor negligence constitutes cruel and unusual punishment, as “[i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause.” Whitley, 475 U.S. at 319.

What is needed to show unnecessary and wanton infliction of pain “varies according to the nature of the alleged constitutional violation.” Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citing Whitley, 475 U.S. at 320). In order to prevail on a claim of cruel and unusual punishment, however, a prisoner must allege and prove that objectively he suffered a sufficiently serious deprivation and that subjectively prison officials acted with deliberate indifference in allowing or causing the deprivation to occur. Wilson, 501 U.S. at 298-99.

“[A] prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” Farmer v. Brennan, 511 U.S. 825, 847 (1994). To state a claim for threats to safety, an inmate must allege facts to support that he was incarcerated under conditions posing a substantial risk of harm and that prison officials were “deliberately indifferent” to those risks. Id. at 834; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). To adequately allege deliberate indifference, a plaintiff must set forth facts to support that a defendant knew of, but disregarded, an excessive risk to inmate safety. Farmer, 511 U.S. at 837. That is, “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Id.

B. Analysis of Condition of Confinement Claim**i. Defendant Ortiz**

Plaintiff has alleged sufficient facts to state a claim against defendant Ortiz for deliberate indifference to the conditions of plaintiff's confinement.

The complaint claims conditions in plaintiff's cell that could present a substantial risk of harm. (ECF No. 1 at 4.) "[A] lack of sanitation that is severe or prolonged can constitute an infliction of pain within the meaning of the Eighth Amendment." Anderson v. County of Kern, 45 F.3d 1310, 1314, as amended, 75 F.3d 448 (9th Cir. 1995). Given the potential sanitary issues presented by the alleged conditions of plaintiff's cell and the extended duration of plaintiff's inability to clean his cell properly, the allegations in the complaint are sufficient to establish the existence of a substantial risk of harm to the plaintiff. The complaint also alleges that defendant Ortiz was made aware of these conditions by plaintiff and disregarded the risk to plaintiff's safety by rejecting plaintiff's request to clean his cell of its potentially dangerous conditions. (Id.) These allegations, if true, are sufficient to establish a deliberate indifference claim against defendant Ortiz. See Farmer, 511 U.S. at 837.

Accordingly, plaintiff has alleged sufficient facts to state a claim against defendant Ortiz for deliberate indifference to the sanitary conditions of plaintiff's confinement in violation of plaintiff's Eighth Amendment rights. See Id.

ii. Defendants Oliver and James

Plaintiff has not alleged sufficient facts to state a claim against either defendant Oliver or defendant James. While, as stated above, plaintiff has alleged sufficient facts to establish the existence of unsanitary conditions which presented a substantial risk of harm, the facts in the complaint are insufficient to show that defendants Oliver and James were deliberately indifferent to those risks. The complaint alleges that defendant Oliver's involvement was limited to bringing plaintiff to his cell. (ECF No. 1 at 4.) As to defendant James, plaintiff only claims that he requested to clean his cell on his designated cleaning day but was told by defendant James that plaintiff could not clean as "they were busy." (Id.) Neither of these allegations show that

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1 defendants Oliver or James were aware of the sanitation issues in plaintiff's cell. There are no
2 other claims as to how these defendants were involved in the complaint. As such, the currently
3 alleged facts are insufficient to establish deliberate indifference by the defendants. Farmer, 511
4 U.S. at 837.

5 Given the above, plaintiff has failed to allege sufficient facts to state a claim for violation
6 of plaintiff's Eighth Amendment rights. As the court found that plaintiff did successfully state a
7 claim against another defendant, plaintiff will be given the option to proceed on his cognizable
8 claim or be given leave to file an amended complaint.

9 **C. Placer County Jail**

10 Plaintiff also names Placer County Jail as a defendant in the complaint. (ECF No. 1 at 2.)
11 However, plaintiff has not alleged any facts that establish that the alleged deprivation of his rights
12 was the result of policy or custom by the Placer County Jail.

13 A local government unit may not be held liable for the actions of its employees under a
14 theory of respondeat superior. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). To
15 establish liability of a local government unit under § 1983, a plaintiff must show that his rights
16 were violated as a result of the policy or custom of that local government unit. Monell, 436 U.S.
17 at 690-91.

18 Plaintiff has not included any allegations in his complaint which establish that his rights
19 were violated due to the policy or custom of the Placer County Jail. On the contrary, plaintiff has
20 included an excerpt from the jail's policies which appears to indicate that plaintiff's cell should
21 have been "deep cleaned" prior to plaintiff being placed in it. Thus, plaintiff has failed to allege
22 sufficient facts to state a claim against the Placer County Jail.

23 **AMENDING THE COMPLAINT**

24 This court finds above that plaintiff alleged sufficient facts to state a cognizable claim
25 against defendant Ortiz for deliberate indifference to the conditions of plaintiff's confinement in
26 violation of plaintiff's Eighth Amendment rights. However, plaintiff has not alleged sufficient
27 facts to state any other claim. Plaintiff will be given the option to proceed on his cognizable
28 claims or to file an amended complaint.

1 If plaintiff chooses to file an amended complaint, he must address the problems with his
2 complaint that are explained above. Any amended complaint must be complete in itself. The
3 court cannot refer to a prior complaint to understand the plaintiff's claims.

4 In an amended complaint plaintiff must clearly identify each defendant and the action that
5 defendant took that violated plaintiff's constitutional rights. The court is not required to review
6 exhibits to determine what plaintiff's charging allegations are as to each named defendant. If
7 plaintiff wishes to add a claim, he must include it in the body of the complaint. The charging
8 allegations must be set forth in the amended complaint, so defendants have fair notice of the
9 claims plaintiff is presenting. That said, plaintiff need not provide every detailed fact in support
10 of his claims. Rather, plaintiff should provide a short, plain statement of each claim. See Fed. R.
11 Civ. P. 8(a).

12 Any amended complaint must show the federal court has jurisdiction, the action is brought
13 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must
14 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
15 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
16 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (stating that a person subjects another to the
17 deprivation of a constitutional right if he does an act, participates in another's act, or omits to
18 perform an act he is legally required to do that causes the alleged deprivation). "Vague and
19 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.
20 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

21 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.
22 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.
23 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
24 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

25 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d
26 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any
27 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.
28 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be

1 set forth in short and plain terms. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002)
2 (“Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus
3 litigation on the merits of a claim.”); Fed. R. Civ. P. 8.


4 An amended complaint must be complete in itself, without reference to any prior pleading.
5 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.
6 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has
7 evidentiary support for his allegations, and for violation of this rule, the court may impose
8 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

9 CONCLUSION

10 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 11 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.
- 12 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is
13 assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
14 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to
15 the Sheriff of Placer County filed concurrently herewith.
- 16 3. Plaintiff states a cognizable Eighth Amendment claim against defendant Ortiz.
- 17 4. Plaintiff fails to state any other cognizable claims in the complaint.
- 18 5. Plaintiff may choose to proceed on his cognizable claims set out above or he may choose
19 to amend his complaint.
- 20 6. Within thirty (30) days of the date of this order plaintiff shall notify the court of how he
21 wishes to proceed. Plaintiff may use the form included with this order for this purpose.
- 22 7. Plaintiff is warned that his failure to comply with this order will result in a
23 recommendation that this action be dismissed.

24 Dated: March 14, 2022

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28 DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DB:14

DB/DB Prisoner Inbox/Civil Rights/S/brit1225.scrn

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PLAINTIFF'S NOTICE ON HOW TO
PROCEED

15 Check one:

16
17 _____ Plaintiff wants to proceed immediately on his Eighth Amendment claim against
18 correctional officer Ortiz. Plaintiff understands that by going forward without amending
19 the complaint he is voluntarily dismissing all other claims and defendants.
20

21 _____ Plaintiff wants to amend the complaint.
22

23 DATED: _____
24

25 James Britt
26 Plaintiff pro se
27
28